

**Letter of Findings Number: 02-20130246P
Tax Administration
For Tax Year 2009**

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ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent penalty.

STATEMENT OF FACTS

Taxpayer conducts business in Indiana. The Indiana Department of Revenue ("Department") determined that Taxpayer had not timely filed an Indiana adjusted gross income tax return and payment for 2009 and so imposed a late payment penalty. Taxpayer protested the imposition of the penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration–Penalty.

DISCUSSION

The Department issued proposed assessment for penalty on failure to timely remit payment of Taxpayer's 2009 Indiana adjusted gross income tax. Taxpayer protests that it was included on a combined return for 2009 which was filed timely. Taxpayer protests the imposition of penalty and requests a waiver of that penalty.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

...

(g) A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added).

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

(Emphasis added).

In this case, the Department determined that Taxpayer did not timely file an Indiana adjusted gross income tax return for 2009. The Department considered this to be a late payment and to constitute negligence and so imposed penalties under IC § 6-8.1-10-2.1. As a result of the protest process, Taxpayer has affirmatively established that it was included on a combined return with related entities in a timely manner for 2009. The penalty will be waived.

FINDING

Taxpayer's protest is sustained.

